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Supreme Court, U.S.
FILED
MAR 18 1998
CLERK

No. 97-1078

# In the Supreme Court of the United States

OCTOBER TERM, 1997

CATHERINE A. GHIGLIERI,
TEXAS BANKING COMMISSIONER, PETITIONER

*v.*

SUN WORLD NATIONAL ASOCIATION, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

SETH P. WAXMAN
*Solicitor General*
*Department of Justice*
*Washington, D.C. 20530-0001*
*(202) 514-2217*

JULIE L. WILLIAMS
*Chief Counsel*
L. ROBERT GRIFFIN
LARRY J. STEIN
DOUGLAS B. JORDAN
*Attorneys*
*Office of the Comptroller of the Currency*
*Washington, D.C. 20219*

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## QUESTION PRESENTED

Whether the Comptroller of the Currency reasonably interpreted 12 U.S.C. 30(b), as previously applicable, to permit a national bank that relocated its main office across state lines to retain existing branches in the State of origin.

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### OPINIONS BELOW

The opinion of the court of appeals in *Ghiglieri* v. *Sun World National Association* (Pet. App. A1-A16) is reported at 117 F.3d 309, and that court's opinion in *Ghiglieri* v. *Ludwig* (Pet. App. B1-B6) is reported at 125 F.3d 941. The opinion of the district court in *Sun World* (Pet. App. C1-C13) is reported at 942 F. Supp. 1111. The opinion of the district court in *Ludwig* (Pet. App. D1-D41) is unreported.

### JURISDICTION

The judgment of the court of appeals in *Ghiglieri* v. *Sun World National Association* was entered on July 22, 1997, and a petition for rehearing was denied on September 25, 1997. The judgment of the court of

appeals in *Ghiglieri* v. *Ludwig* was entered on October 29, 1997. The petition for a writ of certiorari was filed on December 23, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## STATEMENT

1. Respondent Sun World National Association (Sun World) is a national bank subject to the provisions of federal banking law, 12 U.S.C. 1 *et seq.*, and to regulation by the Comptroller of the Currency. Previously, Sun World maintained its main banking office and two additional branches in El Paso, Texas. Pet. App. A2. In 1996, Sun World applied to the Comptroller, in accordance with 12 U.S.C. 30(b), for approval to relocate its main banking office from El Paso to Santa Teresa, New Mexico, a distance of less than five miles. Section 30(b) permits such relocations, subject to the approval of the Comptroller and of two-thirds of the bank's stockholders, provided that the new location is no more than 30 miles beyond the limits of the city, town or village in which the bank was previously located. The Comptroller approved Sun World's application. Pet. App. A2.

Sun World also sought the Comptroller's approval, under 12 U.S.C. 36(c), to establish a new branch at the site of its former main office in El Paso. Pet. App. A2. Section 36(c) generally permits a national bank, with the Comptroller's approval, to establish and operate new branches in the locality or State in which the bank is "situated," if state law authorizes similar branching by state-chartered banks. Because he determined that Sun World's existing El Paso branches caused the bank to be "situated" there, as well as in Santa Teresa, after the relocation of its head office, and because Texas law allows state-wide

branching by state banks, the Comptroller also approved Sun World's second application. See *Id.* at A9-A10.

Petitioner, the Texas Banking Commissioner, opposed Sun World's applications before the Comptroller, and she subsequently filed suit to set aside his decisions and to enjoin Sun World from operating branches in both Texas and New Mexico. Pet. App. A2-A3. The district court granted summary judgment for petitioner, holding that Sun World could not retain its Texas branches after it relocated its main office to New Mexico. *Id.* at A3, C1-C13.

The court of appeals reversed. Pet. App. A1-A2. The court noted that Congress had specifically addressed the issues raised by petitioner's objections, but that it had expressly limited the application of those provisions to bank relocations occurring after May 31, 1997. *Id.* at A3. Applying the law as it existed before Congress had "clearly spoken to the precise issue[s] before [the court]" (*id.* at A6), the court held that Sections 30 and 36 were silent as to a bank's ability to retain branches in one State after relocating its main office to another (*ibid.*). Finding the Comptroller's conclusion that the relevant provisions permitted such retention to be reasonable, the court deferred to that interpretation and reinstated the Comptroller's decision permitting continued operation of Sun World's two existing branches in El Paso. *Id.* at A4-A5, A7-A8. Further agreeing with the Comptroller that those branches caused Sun World to be "situated" in Texas, as well as in New Mexico, for purposes of Section 36(c), the court also reinstated the Comptroller's decision that Sun World was entitled to take advantage of the branching rules

applicable, under Texas law, to similarly situated state institutions. *Id.* at A9-A10.

2. Respondent Commercial National Bank of Texarkana (CNB) is a national bank that formerly maintained its main office and two branch offices in Texarkana, Arkansas. In 1994, CNB sought the Comptroller's approval under Section 30(b) to relocate its main office to Texarkana, Texas. Like Sun World, CNB also sought approval under Section 36(c) to open a new branch at the site of its former main office in Arkansas. The Comptroller approved both applications, over petitioner's objections. Pet. App. B2, F1-F27.

Petitioner filed suit to challenge the Comptroller's actions, and the district court granted summary judgment setting aside the Comptroller's decisions and enjoining CNB from operating in Texas. Pet. App. B2-B3, D1-D41. The court of appeals reversed. *Id.* at B1-B6. As to the bank's retention of existing branches in Arkansas after its relocation to Texas under Section 30(b), the court relied on its previous decision in *Sun World*. *Id.* at B3. With respect to establishment of a new branch, the court again agreed with the Comptroller that, after its relocation under Section 30(b), CNB was "situated" in both Arkansas and Texas for purposes of Section 36(c)'s new-branch rules. The court also agreed that Arkansas law authorized the transformation of the bank's former principal office into a branch. *Id.* at B3-B5. The court therefore reinstated both of the Comptroller's approvals.

## ARGUMENT

Petitioner argues that the court of appeals erred in acccepting the Comptroller of the Currency's conclusion that the respondent banks could retain existing branches in one State after properly relocating their principal offices to another State under 12 U.S.C. 30(b).[1] To the contrary, the court properly deferred to the Comptroller's permissible interpretation of federal banking laws that Congress has committed to his administration, and its decisions do not conflict with any decision of this Court or of another court of appeals. In any event, Congress has specifically addressed the point at issue through statutory amendments that took effect on June 1, 1997, and the matter has therefore been definitively settled for the future. The decisions below therefore merit no further review.

1. Federal banking laws administered by the Comptroller of the Currency, 12 U.S.C. 1 *et seq.*, govern all aspects of the creation, operation, and administrative supervision of national banks. Under 12 U.S.C. 30(b), a national bank may, subject to approval by two-thirds of its shareholders and by the Comptroller, relocate its main office "to any * * * location within or outside the limits of the city, town, or village in which it is located, but not more than thirty miles beyond such limits." Section 30(b) formerly limited such moves to new locations "within the same State," but Congress removed that limitation in 1959. Act of Sept. 8, 1959, Pub. L. No. 86-230,

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[1] Petitioner does not renew in this Court her additional argument below that the Comptroller improperly interpreted 12 U.S.C. 36(c) to allow the establishment of new branches at the sites of respondents' former principal offices. See Pet. i.

§ 3, 73 Stat. 457. Nothing in Section 30(b) suggests that a bank that relocates its main office, whether within one State or across a state line, thereby forfeits its authorization to maintain branches through which it was legally operating at the time of the relocation.

Petitioner contends that Congress expressly imposed such a limitation, applicable to this case, in 12 U.S.C. 36. See, *e.g.*, Pet. 16-21. That is not correct. Sections 36(a), (b) and (d) set out the conditions under which a national bank may "retain" certain branches that it operated before 1927 or before acquiring a federal charter, or that it acquired through a merger or other consolidation. Section 36(c) specifies when the bank may "establish and operate" new branches. Sections 36(f) through (*l*) deal with interstate branching, minimum capital requirements, approval by the Comptroller, and the definition of terms. Not until the addition of subsection (e) in 1994, however, did anything in Section 36 address the issue of a bank's continued operation of existing branches after a relocation properly authorized under Section 30(b). And Section 36(e), which does address that question, expressly provides that its requirements are not effective until June 1, 1997—well after the administrative approvals at issue in this case, which therefore continue to be governed by prior law.

The Comptroller's conclusion that relocation of the respondent banks' main offices, properly approved under Section 30(b), had no effect on their authority to continue operating pre-existing branches is therefore consistent both with Section 30(b) and with Section 36. Section 30(b) authorizes headquarters relocations without suggesting any need to cease operating existing branches. The applicable provisions

of Section 36, on the other hand, deal specifically with a number of branching issues, including situations in which a specified occurrence may *preclude* a bank from retaining an existing branch, but they do not address the retention of existing branches after a main-office relocation.[2] Even if it would be possible to sustain other interpretations of those provisions, separately or together, the court of appeals properly recognized (Pet. App. A4-A7) that it was required to defer to any "permissible" interpretation adopted by the Comptroller. The Comptroller's decisions in these cases satisfy that standard, and the court of appeals properly reinstated them. See *Smiley* v. *Citibank (South Dakota), N.A.*, 116 S. Ct. 1730, 1733 (1996); *NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Co.*, 513 U.S. 251, 256-257

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[2] Petitioner contends (see Pet. 17-18) that the introductory language of Section 36 ("The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:") shows that the succeeding subsections define the only conditions under which a bank may "retain" existing branches. As the court of appeals recognized (Pet. App. A15 (note 5)), however, that argument would prove too much: Under petitioner's construction, a bank that relocated its office within the same State, either before or after the effective date of Section 36(e), would have no authority to "retain" its existing branches. Moreover, petitioner suggests no basis for determining whether any other corporate action—a change of name, for example, or other charter amendment—would trigger a branch "retention" analysis under Section 36, or for distinguishing any such action from a main-office relocation authorized by Section 30(b). Petitioner's reading of Section 36 is therefore implausible.

(1995); *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-843 (1984).[3]

2. Petitioner contends (Pet. 16-21, 24-28) that the decisions below conflict with decisions of this Court and other courts of appeals. That argument confuses the question presented by the petition, which involves retention of *existing* branches after an interstate headquarters move, and quite different issues that arise under Section 36(c) when a national bank seeks to establish a *new* branch—including a new branch in the former headquarters location. For example, *Marion Nat'l Bank* v. *Van Buren Bank*, 418 F.2d 121 (7th Cir. 1969), on which petitioner relies (Pet. 24-26), involved a bank's request to establish a new branch in place of its former main office after that office was moved to a different location within the same State.

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[3] There is little force to petitioner's argument (Pet. 31-32), raised for the first time in this Court, that no deference is due the Comptroller's interpretation of Section 36 because Congress has withheld from him the authority to promulgate regulations implementing that Section. See 12 U.S.C. 93a. Even if the decisions at issue here were based primarily on interpretation of Section 36, rather than Section 30(b), the withholding of authority to issue regulations hardly implies an instruction to the courts not to defer to a responsible administrator's reasonable interpretation of the underlying statute, including the interaction of provisions that are part of the overall statutory scheme that has been committed to the administrator's supervision. See, *e.g.*, *Smiley*, 116 S. Ct. at 1733 ("The Comptroller * * * is charged with the *enforcement* of banking laws to an extent that warrants the invocation of [the rule of deference] with respect to his *deliberative conclusions* as to the meaning of these laws.") (emphasis added); see also *Department of Banking* v. *Clarke*, 809 F.2d 266, 269 (5th Cir.) (deferring to Comptroller's construction of Section 36), cert. denied, 483 U.S. 1010 (1987); *Independent Bankers Ass'n of America* v. *Clarke*, 917 F.2d 1126, 1129 (8th Cir. 1990) (same).

See also *Seattle Trust & Sav. Bank* v. *Bank of California, N.A.*, 492 F.2d 48 (9th Cir.), cert. denied, 419 U.S. 844 (1974) (establishment of new branches in non-headquarters State where bank already has existing branches). Similarly, the cases from this Court that petitioner cites involved the authority to establish *new* branches. See *First Nat'l Bank in St. Louis* v. *Missouri*, 263 U.S. 640 (1924) (establishment of branches before enactment of Section 36); *First Nat'l Bank of Logan* v. *Walker Bank & Trust Co.*, 385 U.S. 252 (1966) (establishment of new branches under section 36); *First Nat'l Bank in Plant City* v. *Dickinson* 396 U.S. 122 (1969) (armored car and deposit receptacle were new "branches" that could be established only in accordance with Section 36).

There was no dispute in this case that the requirements of Section 36(c), which incorporate the law of the State in which the proposed new branch is "situated," apply to the establishment of new branches. Indeed, the court of appeals applied both Section 36(c) and the laws of Texas and Arkansas in reviewing and upholding the Comptroller's approval of respondents' applications to establish new branches in the locations of their former main offices. Pet. App. A9-A10, B3-B5. Thus, petitioner can establish no conflict between the decisions she cites and the decisions below.

3. As noted above, Congress has prospectively settled the statutory question that petitioner seeks to present. In the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, § 102(b)(2), 108 Stat. 2350, Congress specifically addressed the issue of interstate headquarters relocations under Section 30(b) by adding a new subsection (c) to Section 30:

> In the case of a national bank which relocates the main office of such bank from 1 State to another State after May 31, 1997, the bank may retain and operate branches within the State from which the bank relocated such office only to the extent authorized in section 36(e)(2) of this title.

12 U.S.C. 30(c). The same amendments also added new Section 36(e)(2), which imposes specific conditions on the retention of branches in a former home State after an interstate main-office relocation. Pub. L. No. 103-328, § 102(b)(1), 108 Stat. 2349. As in new Section 30(c), Congress expressly provided that the restrictions imposed by Section 36(e)(2) would apply to home-office moves occurring "after May 31, 1997." 12 U.S.C. 36(e)(2).[4]

In view of the enactment of Sections 30(c) and 36(e), both of which have now become effective in accordance with their terms, the statutory question presented in this case will not arise again in the future.[5]

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[4] As the court of appeals pointed out (Pet. App. A7-A8), in enacting the 1994 amendments—and their delayed effective date—Congress specifically adverted to the Comptroller's contrary interpretation of pre-amendment law. See *id.* at L19-L20 (reprinting relevant portion of congressional conference report). If, as petitioner contends (Pet. 23), Congress disagreed with that interpretation, or if it wished to supplant prior law immediately with new provisions, it is difficult to understand why it would have embedded significantly deferred effective dates directly into the very specific provisions at issue. Those provisions, and their delayed effective date, appear instead to represent a conscious legislative compromise, which it would be inappropriate to disturb.

[5] The Comptroller is aware of only one other pending case involving a relocation governed by prior law. *McQueen* v. *Ludwig*, No. 97-2005 (6th Cir.) (briefing completed Feb. 13, 1998).

Accordingly, that question does not warrant review by this Court.

## CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

SETH P. WAXMAN
*Solicitor General*

JULIE L. WILLIAMS
*Chief Counsel*
L. ROBERT GRIFFIN
LARRY J. STEIN
DOUGLAS B. JORDAN
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